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*Attorneys for Plaintiff Jesse Meyer, on his own
behalf, and behalf of all others similarly situated*

**IN THE UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF CALIFORNIA**

JESSE MEYER, an individual, on his own
behalf and on behalf of all others similarly
situated,

Plaintiff,

v.

PORTFOLIO RECOVERY
ASSOCIATES, LLC, a Delaware limited
liability company, and DOES 1-100,
inclusive,

Defendants.

No. 11-cv-01008-AJB-RBB

Hon. Anthony J. Battaglia

DECLARATION OF ETHAN PRESTON

Date: June 23, 2011

Time: 1:30 p.m.

Location: Courtroom 12, Second Floor
Edward J. Schwartz Courthouse
940 Front Street
San Diego, California 92101-8900

1. My name is Ethan Preston. I am an attorney at law licensed to practice before all of the courts of the State of California. I am counsel of record for Plaintiff Jesse Meyer (“Meyer”), and have personal knowledge of all of the facts set forth in this declaration.

2. Attached to this declaration as Exhibit 1 is a true and correct excerpt of the Securities Exchange Commission Form 10-K of Portfolio Recovery Associates, Inc., dated February 25, 2011. Portfolio Recovery Associates, Inc. is the parent company of Defendant Portfolio Recovery Associates, LLC (“PRA”). Exhibit 1 excerpts the portions of this Form 10-K which are relevant to Meyer’s Motion for Preliminary Injunction. The Form 10-K provides

1 information about PRA's use of skip-tracing:

2 If a collector is unable to establish contact with a customer . . . , the collector
3 must undertake skip tracing procedures to develop important account
4 information. **Skip tracing is the process of developing new phone . . .**
5 **information on a customer**, or verifying the accuracy of such information. Each
6 collector does his or her own skip tracing using a number of computer
7 applications available at his or her workstation, a process which is significantly
8 supplemented by a series of automated skip tracing procedures implemented by
9 us on a regular basis.

10 (Ex. 1 11.) The Form 10-K provides information about PRA's use of predictive dialers:

11 *Predictive Dialer Technology*

12 The Avaya Proactive Contact Dialer enables our collection staff to focus on
13 certain defaulted consumer receivables according to our specifications. Its
14 predictive technology takes into account all collection campaign and dialing
15 parameters and is able to automatically adjust its dialing pace to match changes in
16 campaign conditions and provide the lowest possible wait times and abandon
17 rates, with the highest volume of outbound calls.

18 (Ex. 1 at 14.) Finally, the Form 10-K states that "In the process of collecting accounts, we use
19 automated predictive dialers and pre-recorded messages to communicate with our consumers.

20 [The TCPA] and similar state laws place certain restrictions on telemarketers and users of
21 automated dialing equipment and pre-recorded messages who place telephone calls to
22 consumers." (Ex. 1 at 16.)

23 3. Attached to this declaration as Exhibit 2 is a true and correct excerpt of PRA's
24 responses to Meyer's First Set of Special Interrogatories, except that Meyer has redacted his
25 telephone number so it is not filed in the public record. PRA's responses to Meyer's Special
26 Interrogatory Nos. 1 to 4 state that PRA called Meyer's cellular telephone on September 1, 2010,
27 November 4, 2010, December 14, 2010, and January 4, 2011 using an "Avaya Proactive Contact
28 Dialer" (with an FCC registration number of AVIUSA-2801-MA-T). Meyer's Special
Interrogatory No. 9 asked PRA to "[s]tate the number of calls PRA has made to CALIFORNIA
RESIDENT'S SKIP-TRACED TELEPHONE NUMBERS since January 4, 2007." PRA's
response states in relevant part:

PRA refers Plaintiff to a document produced in response to Request for
Production of Documents Number 1 from which PRA can ascertain the following
information: (1) the telephone number called, (2) whether PRA has a record of the
number being skip-traced, and (3) whether the telephone number has a California
area code. PRA cannot verify whether these telephone numbers belong to
California residents, but rather only that these individuals have a cell phone with a

1 California area code and that the number was obtained through skip tracing.
2 (Ex. 2 at 7.) PRA produced the foregoing document to Meyer on April 1, 2011 as
3 PRAJM0001300 (the "Document"). The Document consists of a list of 613,797 telephone
4 numbers. (Meyer's number is the 491,446th telephone number listed in the Document.) Through
5 a series of emails dated April 12, April 15, and April 18, PRA's counsel confirmed that the
6 telephone numbers listed in the Document are (1) cellular telephone numbers with a California
7 area code; (2) which PRA obtained via skip-tracing; and (3) which PRA called between January
8 1, 2007 to March 31, 2011. The Document is not attached to this declaration because PRA
9 designated them as confidential under the stipulated protective order entered by the Superior
10 Court of the County of San Diego.

11 4. Attached to this declaration as Exhibit 3 is a true and correct excerpt of PRA's
12 responses to Meyer's First Set of Requests for Admission. PRA's responses to Meyer's Requests
13 for Admission Nos. 12 to 23 admit that (1) PRA called Meyer's cellular telephone number on
14 September 1, 2010, November 4, 2010, December 14, 2010, and January 4, 2011; (2) PRA used
15 an electronic device to dial Meyer's telephone number; and (3) none of PRA's employees or
16 agents manually dialed Meyer's telephone number. PRA's responses to Meyer's Requests for
17 Admission Nos. 24 to 27 admit the devices used to dial Meyer's cellular telephone number on
18 September 1, 2010, November 4, 2010, December 14, 2010, and January 4, 2011 are "capable of
19 storing more than two telephone numbers." PRA's responses to Meyer's Requests for Admission
20 No. 31 admits that "PRA has called more than 400 California residents using a telephone number
21 that PRA did not obtain either from a creditor or from the person that uses that cellular telephone
22 number."

23 5. PRA has produced an account representative training manual that provides PRA
24 employees on instructions how to use the Avaya Dialer. These instructions are found on pages
25 Bates-stamped PRAJM0001497 to PRAJM0001506. PRA has produced a Do Not Call policy
26 provided to its account representatives which instructs PRA's representatives to require alleged
27 debtors to mail a written request to PRA's headquarters if the alleged debtors do not wish to be
28 called on their cellular telephone number. This policy is found on the page Bates-stamped

1 PRAJM0000003. The foregoing pages are not attached to this declaration because PRA
2 designated them as confidential under the stipulated protective order entered by the Superior
3 Court of the County of San Diego.

4 6. PRA has also produced a user manual for the Avaya Proactive Contact Dialer.
5 The table of contents for this manual is Bates-stamped PRAJM000274 to PRAJM000292 and
6 attached hereto as Exhibit 5. On the page Bates-stamped PRAJM0000303 to PRAJM0000304,
7 also attached hereto as Exhibit 5, the user manual indicates that the Avaya Proactive Contact
8 Dialer can import lists of numbers contained within a computer file.

9 7. I have several years experience representing consumers and small businesses in
10 class actions, focusing on unfair trade practices and mass market technology. I was appointed co-
11 lead counsel in *Lofton v. Bank of Am. Corp.*, No. 07-05892 (N.D. Cal. Nov. 5, 2008). Prior to
12 forming Preston Law Offices, I was a partner at KamberEdelson, LLC, a class action law firm
13 with offices in Chicago and New York. I received my undergraduate degree from the Plan II
14 program at the University of Texas at Austin with honors, and his law degree from the
15 Georgetown University Law Center with distinction. I am an active member of the bar in
16 Arizona and California (and an inactive member of the Illinois and New Mexico bars), and am
17 also admitted to practice in federal courts in the District of Arizona, the Northern District of
18 California, the Central District of California, the Southern District of California, the Northern
19 District of Illinois, the District of New Mexico, the Court of Appeals for the Ninth Circuit, and
20 the Court of Appeals for the Seventh Circuit. I am an author or co-author of the following
21 publications: *Cross-Border Collaboration by Class Counsel in the U.S. and Ontario*, 4 Canadian
22 Class Action Rev. 164 (2007), *The Global Rise of a Duty to Disclose Information Security*
23 *Breaches*, 22 J. Marshall J. Computer & Info. L. 457 (2004) (with Paul Turner), *Computer*
24 *Security Publications: Information Economics, Shifting Liability and the First Amendment*, 24
25 Whittier L. Rev. 71 (2002) (with John Lofton), and *The USA PATRIOT Act: New Adventures in*
26 *American Extraterritoriality*, 10 J. Fin. Crime 104 (2002). A true and correct copy of the Parisi
27 & Havens LLP firm resume is attached to this Declaration as Exhibit 4.

8. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 16, 2011

s/Ethan Preston
Ethan Preston

Certification regarding signature: I hereby attest that the signatory to this document has approved its content.

By: s/David C. Parisi
Email: dcparsi@parisihavens.com